Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINTIAL

Writ Petition (S/S) No. 477 of 2001
(Old No. 17776/90)

Narayan Dutt S/o Sri Chintamani,
R/o Village – Shal Kima, Post Office Gagri Goal,
P.S. Baijnath, District – Almora.

…….. Petitioner

Versus

1. Union of India through Secretary
   Ministry of Defence South Block, New Delhi.
2. The Chief of the Army Staff, Military Head
   Quarter, New Delhi.
3. Central commandant Kumaon Regiment Centre,
   Ranikhet, District Almora,
4. Officer Incharge Record, Kumaon Regiment,
   Ranikhet.

…….. Respondents

Sri Tanuj Semwal, learned counsel for the petitioner.
Sri Suresh Mishra, learned counsel for the respondents.

Dated: July 19, 2006

Hon'ble P.C. Verma, J.

By means of this writ petition the petitioner has prayed for quashing of discharge order dated 15.09.1988, contained in Annexure No. 2 to the writ petition and has further prayed for writ of mandamus to command the respondent to reinstate the petitioner in service on the ground that an Officer who was not competent to pass the impugned order has passed this order as the designation of the officer does not figure in the various authorities mentioned in Column 3 of Item IV of Sub rule (3) of Rule 13 of Army Rules. As such, the order is without jurisdiction. The other ground is that no cause of

discharge is mentioned in the Discharge Certificate which is mandatory to be written in view of Rule 13-A of the Army Rules.

2. The petitioner was recruited in the Indian Army on 23rd July, 1986 and was enrolled on that day by the Recruiting Officer, Almora. During the training period the performance of the petitioner was very poor and was not satisfactory upto the required standard. The Company Commander of the wing reported that matter to the Commanding Officer during his training period that the petitioner's performance was not satisfactory and he is unable to become an efficient soldier which is required for the standard of the Army. He was given two months more time to improve himself but he did not improve himself and the performance was found unsatisfactory by the Company commander. Thereafter he was asked to march before the concerned Commanding Officer and the Commanding Officer under Amy Rule 13(3) Item-IV, discharged the petitioner from service of the Army on 22nd September 1986. Thereafter the petitioner was issued a discharge certificate on 30th September 1986. In paragraph 4 of the discharge certificate, the reason for his discharge is mentioned as **"service on longer required being unlikely to become an efficient soldier."** The petitioner again got himself re-enrolled on 17th July, 1987 by the Branch Recruiting Officer, Almora concealing the fact that earlier he was discharged from the Army and in paragraph 10 of the Enrolment From which he had filled at the time of his subsequent enrolment, he has stated that he had never served the Indian Army Forces in the past.

3. In the recruitment to the Army for the purposes of identification of candidate an Army Number is allotted to the candidate and the petitioner was allotted Army Numver-4180805W, vide order No. 865/64 in the year 1986 when he was initially enrolled as a soldier in the Army.

4. During the course of training after recruitment second time in the year 1987, it was detected by the Recruiting Officer that the petitioner has subsequently without disclosing his previous service and discharge from Army has been re-enrolled in the Army. Therefore, the matter was investigated and during investigation it came to the notice that the petitioner was discharged from service under Army Rule 13(3) Item-IV with effect from 22nd September, 1986 as he was found unlikely to become an efficient soldier. True copies of the reports of investigation are annexed as CA 4, 5 & 6 to the counter affidavit. Next time when the petitioner was undergoing the training his performance was found unsatisfactory and on the recommendation of Company Commander dated 13th July, 1988, the petitioner was asked to march before the Commanding Officer and the Commanding Officer on 12th August, 1988 issued Discharge Order discharging petitioner from the service under Rule 13(3) Item-IV of the Army Rules. In the Counter affidavit it has further been stated that the petitioner could be punished under Section 44 of the Army Act, 1950 for making false answer to the question set forth in the prescribed form of the enrolment before Enrolling Officer for the purpose of his enrolment and is liable for the convocation by the Court Marshal as well as to suffer for imprisonment for a term which may extend to five years

but taking a lenient view the petitioner's services have been simply discharged. Therefore under these facts and circumstances, the impugned order has been passed by the Commanding Officer taking a lenient view not proceeding for Court Marshal proceeding against the petitioner under Section 44 of the Army Act, 1950.

5. In view of the facts narrated above, the petition in devoid of merit and is dismissed. No order as to costs.

(P.C. Verma, J.)
19.07.2006

P. Singh